IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISIDICTION

WRIT PETITION NO.1561 OF 2003

Mr.Balaji Dnyanoba Jana ..Petitioner

Vs.

Ms.Kalyani Govind Jana & Ors....Respondents

....

Mr.S.M.Mhamane for Petitioner
Mr.S.N.Chandrachud for respondents no.1 to 3

....

CORAM : B.H.MARLAPALLE,J.
DATE : MARCH 9,2005

P.C.:

1. Heard Mr.Mhamane, the learned counsel for the petitioner and Mr.Chandrachud, the learned counsel for the respondents no.1 to 3.

2. The petitioner is the defendant no.1 in Special Civil Suit No. 866 of 2001 and he moved an application at Exh.23 under order VII Rule 11 of the C.P.C. on or about 3.4.2002 and the said application came to be rejected by the learned Civil Judge S.D. at Pune vide his order dated 28.10.2002 and hence, this petition.

3. The trial Court clearly observed that the issue regarding the deficiencies in payment of court fees

could be framed as one of the issues while framing all other issues to decide the suit but proceeded to reject the application. This is indefensible. The application Exh.23 could have been kept pending and while framing the issues for further trial of the suit, the first issue could be regarding the maintainability of suit on account of deficiency in court fees. The reasoning given by the trial Court is correct but the operative part and more so, the order rejecting the application, cannot be sustained.

4. Hence, this petition is disposed of by restoring the application at Exh.23 to the file of the trial Court in Special Civil Suit No. 866 of 2001 and while framing the issues for further trial of the suit, the first issue regarding the court fees, shall be framed at an appropriate time so that the application at Exh.23 could be disposed of.

5. Writ to go forthwith to the trial Court.

[B.H.MARLAPALLE,J.]